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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,777	11/21/2001	M. Kevin Sorrels	5588-00101	1822

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EXAMINER

PATEL, TAJASH D

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 12/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/990,777

Applicant(s)

SORRELS, M. KEVIN

Examiner

Tejash D Patel

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-24, 26-30 and 32-35 is/are rejected.
- 7) ☒ Claim(s) 10, 25 and 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 9, 14-16, 18, 27 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Dapsalmon (US 5,685,014). Dapsalmon discloses a guard/glove (1) for covering a portion of the digit that has a protection portion (2,4) of a body being made of penetration resistant material, col. 3, lines 51-53 with a less protective portion (3) of the body being adjacent thereto, col. 3, lines 33-65. Further, the protective portion is visually distinct/different in color than the less protective portion, col. 4, lines 24-25 & col. 4, lines 38-44..

With regard to claim 9, the body covers a substantial portion of a medial joint of the digit thereabout and wherein the protective and less protective sections are flexible to allow the digit to flex since the structure of the guard is knitted, col. 3, line 41.

Additionally, with regard to claim 14-16, the body portion includes a dorsal portion/at end of the fingers (7), which contacts a dorsal portion of the digit that is made of the protective portion as shown in figure 1.

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With regard to claim 18, the protective portion has a longer length than a length of the less protective portion, col. 3, lines 46-49.

With regard to claims 27 & 32, it is inherent that the color of the protective portion will contrast with the color of the digit.

3. Claims 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Machida et al. (US 5,133,087). Machida et al. (hereinafter Machida) discloses a protective guard/gloves which covers a portion of the digit, col. 1, lines 10-12, that is made of a less protective portion being bonded/laminated together with a protective portion which changes color upon contact, col. 1, line 60 – col. 4, line 9. Further, it is inherent that the color of the guard contrast with the color of the digit.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 4-7, and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dapsalmon.

With regard to claims 4-6 & 12-13, col. 3, lines 54-56, of Dapsalmon states that the protective portion is made of polyethylene, etc. Therefore, it would have been obvious that protective body worn about the digit can be made of any desired material, which were available at the time the device was constructed.

With regard to claim 7, col. 3, line 53, of Dapsalmon states that the guard is made of a high resistance material. Therefore, it would have been obvious to one skilled in the art that the guard is puncture resistance to a needle having various gauges depending on the particular application thereof.

With regard to claims 11, it would have been obvious to one skilled in the art the colored guard can be visible over a textile covering worn about the body.

6. Claims 3, 8, 21-22, 24, 26, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dapsalmon in view of McCrane. Dapsalmon discloses the invention as set forth above except for showing the body being shaped with an open end to allow a portion of the digit pad therethrough and a portion of a medial joint being uncovered.

McCrane discloses a guard (10) including a body (16) being shaped with an open end (20) to allow a portion of the digit pad therethrough as shown in figure 1 and a portion of a medial joint being uncovered by opening (22).

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It would have been obvious to one skilled in the art at the time the invention was made to form the guard of Dapsalmon with the body being shaped with an open end to allow a portion of the digit pad therethrough and a portion of a medial joint being uncovered as taught by McCrane so that the users digits are easily flexible when the device is worn.

With regard to claim 21, col. 3, line 53, of Dapsalmon states that the guard is made of a high resistance material. Therefore, it would have been obvious to one skilled in the art that the guard of Dapsalmon when viewed McCrane is puncture resistance to a needle having various gauges depending on the particular application thereof.

With regard to claims 26 and 33, it would have been obvious to one skilled in the art the colored guard can be visible over a textile covering worn about the body.

7. Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Machida in view of McCrane. Machida discloses the invention as set forth above except for showing the body being shaped with an open end to allow a portion of the digit pad therethrough and a portion of a medial joint being uncovered.

McCrane discloses a guard (10) including a body (16) being shaped with an open end (20) to allow a portion of the digit pad therethrough as shown in figure 1 and a portion of a medial joint being uncovered by opening (22).

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It would have been obvious to one skilled in the art at the time the invention was made to form the guard of Machida with the body being shaped with an open end to allow a portion of the digit pad therethrough and a portion of a medial joint being uncovered as taught by McCrane so that the users digits are easily flexible when the device is worn.

8. Claims 1-9, 12-24, 27-30, and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sorrels (US 5,450,626) in view of Dapsalmon (US 5,685,014). Sorrels discloses a guard (10) including a distal portion having a protective portion (40,42) of a body being penetration resistant, col. 2, lines 41-48, with a less protective portion (44), col. 3, lines 18-22 and as shown in figure 3. Further, an end of the body is uncovered so that a pad of the digit extends therethrough without covering a medial joint thereof as shown in figures 1 and 2. Additionally, the body covers a substantial portion of a medial joint that is configured to contact a distal portion of the digit as shown in figure 5, 6, and 8.

A bead of material as broadly claimed is formed between the protective and less protective portions as shown in figure 3, with the protective portion having a longer length than the less protective portion as shown in figures 2 and 4. However, Sorrels does not show the protective portion having a different color than the less protective portion.

Dapsalmon discloses the invention as set forth above in paragraph 2.

It would have been obvious to one skilled in the art at the time the invention was made to form the protective penetration resistant portion (40) which is colored differently from the less protective portion (21) as taught by Dapsalmon, in order to measure the protection performance of the device.

With regard to claims 4-6 & 12-13, it is obvious that the guard can be made of any desired material which were available at the time the device was made.

With regard to claims 19 and 20, col. 4, lines 62-64, of Sorrels discloses that the circumferential extension of the protective portion/dorsal segment can extend a greater or lesser distance thereabout. Therefore, it would have been obvious to one skilled in the art to extend the protective portion about the digit of Sorrels when viewed with Dapsalmon as required for a particular application or end use thereof.

With regard to claims 7 and 21-23, col. 2, lines 41-49 of Sorrels states the guard forms a sheath which protects the fingers from intravenous needles. Therefore, it would have been obvious to one skilled in the art that the guard of Sorrels when viewed with Dapsalmon can be puncture resistance to needle having various gauges depending on the particular application of the device.

***Response to Amendment***

9. The argument and amendment filed on 9/17/03 has been considered and duly noted. In view of such, the arguments are moot based upon a newly applied prior art (see rejection above). Therefore, this office action is being made new-non Final.



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*Allowable Subject Matter*

10. Claims 10, 25 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

11. The prior art made of record and not relied upon is considered pertinent to

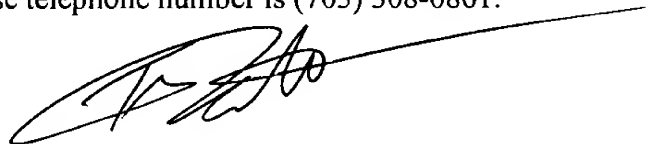
Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (703) 306-9184. The fax phone number for this group is (703) 872-9306

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, John Calvert, can be reached on (703) 305-1025.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

December 12, 2003



Tejash D Patel  
Primary Examiner  
Art Unit 3765